

Atty Docket: Beiersdorf 754-KGB

**CONDITIONAL PETITION FOR EXTENSION OF TIME**

If any extension of time for this response is required, Applicants request that this be considered a petition therefore. Please charge the required fee to Deposit Account No. 14-1263.

**ADDITIONAL FEES**

Please charge any further insufficiency of fees, or credit any excess to Deposit Account No. 14-1263.

**REMARKS**

Claims 1-9 have been canceled and replaced by new claims 10-18.

New independent claim 10 requires that the composition have an aqueous phase, a lipid phase and an active ingredient component, the active ingredient component consisting of (a) the partially neutralized ester of monoglycerides and/or diglycerides of saturated fatty acids and (b) lipoic acid, ("the combination").

Applicants respectfully suggest that claim 10 is distinguished from the von der Fecht. It is also believed that at least claims 11-13 comprise patentable subject matter.

The von der Fecht reference lists literally hundreds of antioxidants, which are disclosed as being used individually or in one of innumerable combinations. Col. 5, lines 42-46. As stated in the reference, the desirable concentration range of antioxidants is also quite broad. This provides an exceptionally broad disclosure of one or more antioxidants at greatly varying weight ratios. Persons in the art could not visualize any particular antioxidant at any particular concentration from this disclosure.

Therefore, limiting the antioxidant of the active component to lipoic acid by "consisting of" language provides for the composition in claim 10 that would not have reasonably been suggested by von der Fecht. This is because the reference is devoid of

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any teaching or suggestion to limit the antioxidant in the active ingredient component exclusively to lipoic acid.

Support for describing the combination as an active ingredient can be found on page 9, 3rd paragraph and page 10. The preceding paragraph sets out the contemplated weight ratio ranges of the active combination in relation to the entire composition.

Applicants also describe the claimed composition's properties that underlie Applicants' description as an active ingredient. Page 8, 3rd ¶. Specifically, the combination of mixed partially neutralized mono-/diglyceride esters and  $\alpha$ -lipoic acid markedly stabilizes the composition against oxidation. As a result, the bioavailability of  $\alpha$ -lipoic acid becomes increasingly greater in comparison to other "active components" derived from the art. Thus, the overall effectiveness of the claimed active component appears enhanced, i.e., "more active" when compared with the more rapidly decreasing effectiveness (presumably due to oxidation) of similar combinations in the art. See generally, pp. 9-11.

The foregoing discussion based on the specification also indicates that Applicants eventually learned, contrary to von der Fecht's disclosure, that all antioxidants are not equivalent in the active ingredient component. Von der Fecht suggests that all antioxidants are equivalent in the compositions disclosed therein, except for the preference for vitamins A and E. Col. 4, line 50 to col. 5, lines 48-56. It was this teaching that lay the foundation for the rejection – i.e., that  $\alpha$ -lipoic acid was equivalent with the hundreds of other antioxidants disclosed. It is relevant that von der Fecht's exemplified embodiments only broadly recite antioxidants, dyes, etc together, but do not recite a single specific antioxidant. The antioxidants were disclosed as merely a genus of interchangeable equivalents.

In contrast, Applicants disclosure regarding  $\alpha$ -lipoic acid's effectiveness indicates that the antioxidants are not simply interchangeable equivalents. Thus, a major assumption underlying citing von der Fecht in the rejection is believed to be substantially rebutted.

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In addition, dependent claims 11-13 provide for a specific range of weight ratios of (b)/(a). As discussed below these ratios have not been disclosed in von der Fecht and cannot reasonably be viewed as result-effective variables. In addition, a cursory examination of the reference's exemplified embodiments shows that the actual content of antioxidants was not disclosed. Thus, there was no disclosure of any preferred range of weight ratios for lipoic acid and the partially neutralized di/triglyceride suggested. Therefore, it would be improper to suggest that such ratio ranges amount to routine optimization. *In re Antonie*, 195 USPQ 6, 8-9 (CCPA 1977) (recognizing that where the variable optimized by applicant was *not* known in the prior art to be a "result-effective" variable, a person skilled in the art would *not* have found it obvious to optimize that variable.)

#### CONCLUSION

Applicants respectfully suggest that new claims 10- are not obvious over von der Fecht. The claims are limited to a component consisting of a) the partially neutralized ester of monoglycerides and/or diglycerides of saturated fatty acids and (b) lipoic acid, and in a fixed range of weight ratios.

Persons of ordinary skill would not have been motivated to arrive at the claims in view of von der Fecht given the references broadly qualitative and non-quantitative disclosure.

Respectfully Submitted,

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